SUPPLEMENTAL DIRECT TESTIMONY

OF

JIM AGNEW

CONSUMER SERVICES DIVISION
ILLINOIS COMMERCE COMMISSION

TALK AMERICA, INC.

DOCKET NO. 00-0732

JANUARY 17, 2002

OFFICIAL FILE

I.C.C. DOCKET NO. 00-0732

Start Exhibit No. 3.1

Witness Agrew
Date 415/02 Reporter

1	Q.	Please state your name and business address.
2	A.	My name is Jim Agnew and my business address is 527 East Capitol Avenue,
3		Springfield, Illinois 62701.
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5	Q.	Are you the same Jim Agnew who previously submitted pre-filed direct
6		testimony in this docket?
7	A.	Yes.
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9	Q.	What is the purpose of this supplemental testimony?
10	A.	This supplemental testimony will discuss my review of the complaint records of
11		Talk America, Inc. provided to me by the Company on January 8, 2002 as a
12		result of a data request.
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14	Q.	Please indicate your opinion regarding the Company's application for a
15		certificate of facilities-based local exchange service authority in Illinois?
16	A.	As I discussed in my previous testimony, the Talk America, Inc. complaint
17		records with the Illinois Attorney General's Office, the Company's use of multiple
18		names and d/b/as and the Company's responses to certain questions have all
19		led me to believe that the Company lacks the managerial expertise to be certified
20		as a facilities-based local exchange service provider in Illinois.
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24	Q.	Has your	opinion	on this	matter	changed?
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A. No. In fact my review of Talk America, Inc.'s complaint records has revealed further reasons why the Company lacks the managerial expertise for the Commission to certificate it as a facilities-based local exchange carrier.

Α.

Q. What information in the complaint records of Talk America, Inc. supports your conclusion?

I analyzed the written records of complaints by Illinois citizens against the Company as well as the Company's responses, and found patterns of practice and behavior which constitute violations of Section 13-902 of the Illinois Public Utilities Act (PUA). In addition, the complaint records further support my conclusion that the Company used its marketing association with America On-Line (AOL) improperly so that customers were led to believe that AOL was their pre-subscribed long distance carrier. Finally, my review of the third-party verification tapes provided by Talk America, Inc. in support of its sales of long distance service revealed further violations of Section 13-902 of the PUA.

- Q. You already discussed the requirements of Section 13-902 of the PUA in your previous testimony. What did your review of the Talk America, Inc. complaint records reveal?
- A. Complaints by Illinois citizens were submitted to Talk America, Inc. by the Illinois
 Attorney General's Office, the Illinois Commerce Commission (ICC), the Federal

Communications Commission (FCC) and the Better Business Bureau (BBB). The records of these complaints illustrate that Talk America. Inc. used a variety of similar letter of agency (LOA) checks as a means to acquire new long distance customers. The checks often contained only the name of America On-Line and the AOL logo on the front side of the checks. Talk America, Inc. and its d/b/a "The Phone Company" were mentioned in very small type on the back side of the checks as the "provider" of the AOL Long Distance Savings Plan. The language on the front of many of the checks simply indicated that, "Signing, cashing and/or depositing of this check will switch your long distance service and local toll to AOL Long Distance Savings Plan." See Attachment 1. Moreover, in their written complaints, customers often alleged that they did not know the distinction between AOL and Talk America, Inc. Furthermore, in several instances, AOL was the only party allegedly identified by the complainant despite the fact that AOL is not a certificated provider of long distance service in Illinois, and those services were always provided by Talk America, Inc. The LOA checks contained in the complaint records which were used by Talk America, Inc. to illustrate the Company's attempts to obscure its identity with that of AOL.

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Q. You mention that not all of the LOA checks contain just AOL's name on the front. How did the other checks appear?

Other checks followed a similar design as the checks which only had AOL's name and logo on the front in that some checks contained both AOL's name and

logo in combination with language that indicated the AOL Long Distance Savings Plan was "provided by Talk.Com Holding Corp" See Attachment 2 Others had the same language, but instead stated that the AOL Long Distance Savings Plan was "provided by The Phone Company" See Attachment 3. A small number of the checks only contained Talk.Com as the company listed. See Attachment 4. Finally, several checks were issued to customers in tandem with Discover Card, and were represented as "\$25 Instant Cashback Bonus* Award from Discover Card and Talk.Com. See Attachment 5. Each of the different checks followed the same basic design, and appear to have been issued to existing customers of AOL, Discover Card or other companies with which Talk America, Inc. may have had marketing arrangements. Id.

Α.

Q. What other patterns of regulatory violations did you discover after reviewing the various LOA checks used by Talk America, Inc.?

The patterns of practice by the Company with its LOA checks reveal a variety of problems. Not only were the LOA checks allegedly used, I believe, as part of the Company's attempts to obscure its identity, but they were also allegedly used in a manner which violated Section 13-902 of the PUA. Many of the checks allegedly contained incorrect customer information such as combining the phone number for a different customer with the name and address of another. Nevertheless, it was alleged that these checks then, when signed, were used by the Company to change the wrong customer's pre-subscribed long distance phone services. In one instance, the entire list of phone numbers for a hotel

were allegedly changed to Talk America, Inc., even though the endorser of the check crossed out the hotel's main number on the check and replaced it with her correct number. Furthermore, the name and address on the check in the complaint records held by Talk America, Inc. do not match the hotel's name and addresses.

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A particularly disturbing case of alleged slamming associated with Talk America pertains to allegations that, although the address and phone number on the check belonged to the complainant, the name on the check was not the Instead, the name on the check was the name of the complainant's. When the complainant called the complainant's girlfriend's ex-boyfriend. Company to complain about being switched, he was allegedly told that the Company could not speak to him because his name was not on the Talk America, Inc. account. This occurred even though he alleged that it was his name on the local service and he was responsible for all the bills on that phone number in question. Furthermore, the check in this case was issued on March. 26, 2001, but not cashed until April 10, 2001. See Attachment 6 The LOA check associated with this case also reveals that the Company allegedly initiated this change in service using the LOA check after the date upon which it claimed in the Rebuttal Testimony of Sharon Thomas (Page 7, Lines 11-12) it had ended this practice.

At least two LOA checks in the complaint records were allegedly used as means to change customers to Talk America, Inc. without the checks even being signed.

Attachment 4 above illustrates one of these instances. See Attachment 4.

Additionally, no

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Finally, from my review of the complete complaint records provided by Talk America, Inc. the records show that almost none of the LOA checks allegedly associated with slamming were used in tandem with confirmation letters to customers as required under Section 13-902 of the PUA. In only a couple of rare instances were confirmation letters included in the records. See Attachment 7. However, these confirmation letters from the Company were still in violation of Section 13-902 of the PUA because the letters did not follow the guidelines set forth in the Section. In particular, the letters do not contain a toll free number for the customers to call in order to cancel the change in service.

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Q. What other patterns of regulatory violations and/or deceptive practices did you discover in the complaint records provided by Talk America, Inc.?

129 A. Many of the complaint records contained replies from Talk America, Inc. that the 130 Company had no LOA or independent third party verification (TPV) on file to 131 support the alleged change in carrier. These are examples of clear violations of 132 FCC slamming rules and Section 13-902 of the PUA. 133 In some of the complaint records where the Company could produce no LOA or 134 TPV, Talk America, Inc. asserts that the customer had signed up on-line. 135 However, any action by the customer to "sign-up" would still fall under the same 136 regulatory requirements for LOA's, and the Company did not supply any on-line

forms or signatures in support these particular claims.

confirmation letters, as required under Section 13-902 of the PUA, were included

in these records.. For example, one record of a customer who was allegedly 139 140 enrolled using multiple methods (LOA check, TPV and "on-line sign-up) included one page of what appears to be an on-line LOA. See Attachment 12 However, 141 142 the letter only asked the customer to provide its phone number and nothing else. 143 FCC rules for LOAs require more information, including the subscriber's name and billing address. Moreover, as with the vast majority of the other cases, no 144 record of a confirmation letter was attached to this file. 145 146 Other records in the complaint files supported my concerns about the Company's use of its association with AOL. For example, one customer alleged they 147 received a winback letter addressed to "Dear AOL Long Distance Member," 148 referring to the customer's "service with AOL Long Distance," and signed by 149 150 "AOL Long Distance, Customer Care." See Attachment 8 The letterhead contains AOL's logo with Talk.Com's logo and address directly underneath it. 151 152 Moreover, this is the only place where Talk.com is referenced in the entire letter. 153 ld. Talk America. Inc.'s TPV provider also seems to be confused about the 154 155 Company's identity. In a reply letter, to the FCC, the third party verifier, 156 Advanced Data-Comm, Inc. (ADC), never mentions Talk America, Inc. See Attachment 9 Instead, it references verifying the customer's "intent to change 157 158 their telephone service to the AOL Long Distance Savings Plan." Id. It also states 159 that, "ADC identified this particular customer account as a verified sale and 160 notified AOL accordingly." Id. 161 Still, another customer alleged experiencing Talk America, Inc.'s use of AOL's

identity to obscure its own when she alleged that she received a collection notice from the AOL Long Distance Savings Plan, with the AOL logo stating she owed a balance "due to AOL Long Distance Savings Plan." and signed by "AOL Long Distance Savings Plan, Collections Department." See Attachment 10 Many customers alleged they were billed for monthly fees or other charges on their credit cards by Talk America, Inc. even though PIC freezes blocked the Company's attempts to change the customers' long distance services. Credit card statements were included in the records in support of these allegations. Id. As I reviewed the complaint records, I also began to notice a pattern in which customers repeatedly alleged that they had either been slammed multiple times by Talk America, Inc. or alleged that their attempts to select another long distance carrier had been blocked despite having no PIC freeze with their local Some of the complaint records included Talk America, Inc.'s company. employees mentioning the need to receive a customer's "notice of intent to cancel service." Finally, I came across a Company employee's notation that stated the following about a customer's account:

On 5/19/98 we received notice of cancellation from lec. On 5/20/98 we resubmitted an order to lec as we were never notified from member that she wanted to cancel. That order was confirmed on 5/21/98. On 10/8/98 we received another notice of cancellation from lec but no request to cancel from member. On 10/14/98 another order was sent to lec and it was confirmed on 10/15/98. On 11/13/98 member contacted us to find out why we were still her carrier. Member was told that according to Terms of Service that she agreed to, we required that all members must notify us of the request to cancel in writing.

See Attachment 11

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I have concluded that Talk America, Inc. re-submitted PIC changes for customers who had legitimately chosen other carriers in direct violation of FCC slamming rules and Section 13-902 of the PUA. The Company cannot use its previous LOA or TPV to re-submit a PIC change once the customer has actively chosen another carrier. Regulations require that a new sale and verification/confirmation be performed in order to do this. Regulations also do not require any sort of cancellation notice by the customer to the previous carrier, and Talk America, Inc.'s records provided no customer-signed contracts which would dictate otherwise.

Q. Did you also find any regulatory violations in your review of the audio tapes containing TPVs for Talk America's sales to Illinois customers?

A. Yes. As I detailed in my previously filed direct testimony, TPVs must follow certain guidelines under Illinois law. Agnew Direct Testimony, Page 4, Line 16 to Page 5, Line 3. They must also comport with the slamming rules of the FCC. Id. In many of the TPV tapes provided by Talk America, Inc. I reviewed the verifier did not confirm the subscriber address, as required under Section 13-902 of the PUA.

Many of the TPV tapes revealed that the verifier also did not advise the subscriber that they may only designate one pre-subscribed carrier for each type of service for each line, as required under Section 13-902 of the PUA.

Furthermore, in many of the TPV tapes, the verifier stated that the subscriber's service would be changed to the AOL Long Distance Savings Plan, instead of

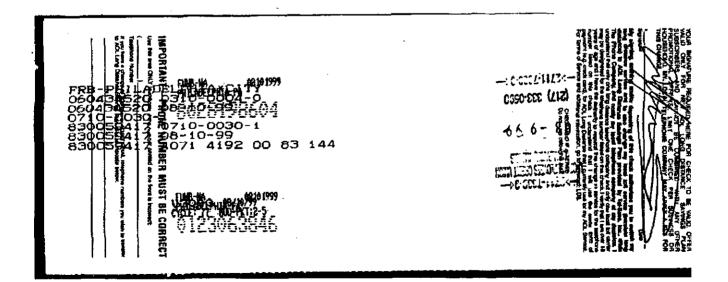
the Company. Talk America, Inc. and its previous names and d/b/as were only

mentioned briefly later in the verifications, typically when the verifier was 214 215 discussing the customer's billing, rates and benefits. One TPV audio record revealed that the verification was for a change to the 216 "Sears Callers Advantage Long Distance Program." While the complaint record 217 for this particular customer's alleged change in service was blocked by a PIC 218 freeze, this did not, allegedly, prevent the company from billing her a monthly fee 219 220 on her Sears Charge under the name, "Callers Advantage". Apparently, this is vet another d/b/a or Company name that Talk America, Inc. used. 221 Finally, many of the TPV tapes contained no mention of the fact that a fee may 222 223 be imposed to the subscriber for the change in service as required under Section 224 13-902 of the PUA. 225 To summarize, in your opinion has Talk America, Inc. exhibited the 226 Q. necessary managerial capabilities to be certificated as a facilities-based 227 local exchange carrier in Illinois? 228 229 No. Talk America, Inc.'s complaint records reveal patterns of practice over a period of several years in direct conflict with Illinois statutes and FCC rules. 230 231 Does this conclude your supplemental testimony? 232 Q. 233 Yes. Α. 234

CHECK EXPIRES AUGUST 31, 1999. SIGNING, CASHING AND/OR DEPOSITING OF THIS CHECK WILL SWITCH YOUR LONG DISTANCE SERVICE AND LOCAL TOLL TO AOL LONG DISTANCE SAVINGS PLAN. 3-50 310 7777A91861009 No. 10311609 All the respective Issue Date August 1, 1999 PAY TO THE ORDER OF: Affeelea Nevling PAY Twenty Five & 00/100 DOLLARS **\$25.00** PO Box 9 Hume IL 61932-0009 Altention Financial institution Check must be endorsed with 0604345207201 First Union Bank If your address or telephone number is printed incorrectly, please make changes on the reverse side AOL Long Distance **Customer Phone Number (217) 887-2522** Salvings Plan

#0010331009# #031000503#2000003283?41#

*000000 \$500A



Account #: 02000003283741

Amount: \$25.00

Sequence #: 8923182752 R/T #: 0003100050

Check #: 0019383959 Date Paid: 11/10/99

Volume ID: 19991202233806

CHECK EXPIRES NOVEMBER 30, 1999. SIGNING, CASHING AND/OR DEPOSITING OF THIS CHECK WILL-SWITCH YOUR LONG DISTANCE SERVICE AND LOCAL TO AOL LONG DISTANCE SAVINGS PLAN PROVIDED BY TALK.COM HOLDING CORP.

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No. 19383959

Issue Date October 25, 1999 Chack Assunt

PAY TO THE ORDER OF:

Peggy Marie 3256 Magnolia Dr Harvey IL 60426-2719

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PAY Twenty Five & 00/100 DOLLARS

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Check must be endorsed self-payer's signature to be valid for cashing adding depose. Check value not to exceed \$25.00

If your address or feliphone number is printed incorrectly, please make Customer Phone Number (708) 333-5059

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CHECK EXPIRES 30 DAYS AFTER ISSUE DATE. SIGNING, CASHING, AND/OR DEPOSITING OF THIS CHECK WILL SWITCH YOUR LONG DISTANCE SERVICE TO THE AOL LONG DISTANCE SAVINGS PLAN PROVIDED BY THE PHONE COMPANY.

Homes Phone Number (630)588-1559

PAY TO THE ORDER OF:

51376778

July 1, 1998

AUTO ******** 5-DIGIT 60187 5555A2426778 Mattandmarya Ellis 318 E Madison Ave Wheaton, IL 60187-4216

50 Dollars and 00 Cents
Attention Financial Institution

\$50.00

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Account #: 02000003283741

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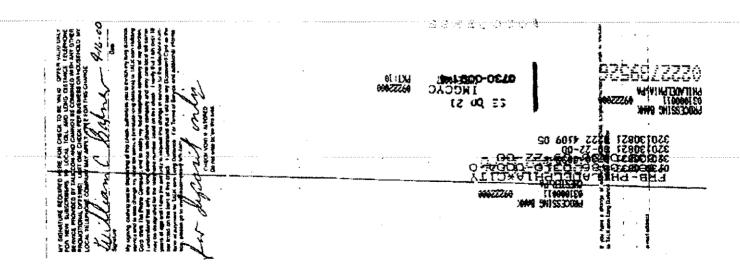
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Volume ID: 20000302201503

TALK.com CHE	CK EXPIRES FEBRUARY 15, 2000. SIGNI THIS CHECK WILL SWITCH YOUR LONG TOLL-TO TALK COM H	G DISTANCE SERVICE AND LOCAL	3-50
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CHECK EXPIRES APRIL 30, 2001. THE SIGNING, CASHING AND/OR DEPOSITING
OF THIS CHECK WILL SWITCH YOUR LONG DISTANCE SERVICE AND
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BY TALK COM HOLDING CORP.

3-50 310

031AA990152459

44 Willowhaven Ct. Colona, IL 61241-9012

Josh Hulter

PAY TO THE ORDER OF:

No. 0099152459

Issue Date March 26, 2001

PAY Twenty Five 00/100 DOLLARS

\$25.00

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Check must be endorsed with payer's algorithm to be valid for tashing end/or deposit. Check value not to exceed \$25,00

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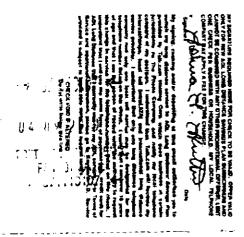
First Union Bank

If the telephone number is printed incorrectly, please provide the correct number. Customer Phone Number (309) 796-0925

ldbaailahdalahdhallaadhbhdaldalahd

#0099152459# #1031000503#2000003283741#

*000000 2 500 A





Holding Corp.

Account Number: 0000031542871

04/16/2001

Talk.com 6805 Route 202 New Hope, PA 18938

JOSH HUTTER 44 WILLOWHAVEN CT COLONA, IL 612419012

Dear Talk.com Long Distance Savings Plan Customer,

Thank you for choosing the Talk.com Long Distance Savings Plan.

We have received your order for phone number 309-796-0925 and have forwarded it to AMERITECH ILLINOIS. Soon you will begin to enjoy the pricing and features that only Talk.com members can demand. Each month, your long distance charges are conveniently billed to the credit cars you selected. The charges appear on your credit card as "Talk.com Long Distance". To view your on-line billing information, please go to the Member's Area at http://www.talk.com, and enter the following information:

Account Number= 31542871 Password=

If you wish to change the password, please login to our Members Area, enter the password above to view your bill, then select "Change Password" under the Medify Account section. Then follow the instructions.

It you have any addition: postions, please go the Member's Area at http://www.talk.com. We make and appreciate your business.

Sincerely,

Talk.com Long Distance That her her

TALK 01517

TALK.com Holding Corp. + 6805 Route 202 + New Hope, PA 18938 -+ Phone 215-862-1500 + Fax: 215-862-1515



04/11/2001

Talk.com 6805 Route 202 New Hope, PA 18938

LOVADER HEDGER 3661 WANDA ROAD EDWARDSVILLE, IL 62025

Dear AOL Long Distance Member,

Unfortunately we have received notification from AMERITECH ILLIMOIS of a request for service interruption regarding your account with AOL Long Distance provided by Talk.com. If you were not aware of the cancellation of your AOL Long Distance account, it is possible that another carrier has requested to switch your service without your authorization.

To prevent an interruption of your service with AOL Long Distance and your online billing, please contact AMERITECH ILLINOIS and tell them not to make the change.

Remember, you may receive a final bill for the calls made between the end of your last billing cycle and the effective date of your cancellation.

We value and appreciate your business. If you have in fact cancelled your service, we sincerely hope that you will reconsider this decision and keep your lines on our plan. If you would like to discuss your service, please call us at 1-868-405-3086.

Sincerely,

AOL Long Distance Customer Care

2003 P. 03 CAN DE: 6/29/01

JUN-27-01 WED 11:49 AM ADVANCED DATA COMM.

FAX NO. 319 582 2003



Susan Memilian == FCC-IL DUE: G/29/01
14962718 815-634-0243

June 27, 2001

Re: BTN 8156340243

Susan McMillan:

This letter is being provided to you in order to clarify the procedures used by Advanced Data-Camm (ADC), an Iowa-based independent third party verifier, with respect to the change of the above described BTN from their previous long distance telecommunications provider to the AOL Long Distance Savings Plan. These procedures strictly conform to the rules and regulations regarding the change of a consumer's primary long distance telecommunications service provider as prescribed in Title 47, Section 64.1100 of the Code of Federal Regulations and FCC 98-334, 14FCC Red 1508 (1998).

On 10/14/99, ADC Verification Representative # 0899 verified that the individual identifying them self as the duly authorized person to make decisions on the long distance service and the AOL account, as well as their intent to change their telephone service to the AOL Long Distance Savings Plan. The customer identified them self as Susan McMillan. After Susan duly authorized the change in the primary long distance telephone service provider, the ADC Verification Representative obtained the customer's date of birth: 051862 as their unique identifier. As such, ADC identified this particular customer account as a verified sale and notified AOL accordingly.

As an independent third party verification company, Advanced Data-Comm, Inc. does not have access to or knowledge of the phone charges incurred by Susan. Therefore, ADC lacks the authority to cancel or make adjustments to this account.

Thank you for your time and consideration regarding this matter. If you have any questions or need additional information, please feel free to contact customer support at 1-888-825-5265.

Sincerely,

Laura McCandless

Laura McCandless Account Manager, ADC

EX. 3.1 Attachment 10

Sent by: IL ATTORNEY GENERAL

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12177821097;

03/13/00 9:50AM; Jeifes #477; Page 7/9



AOL Long Distance Savings Plan

Dear AOL Long Distance Saving Plan Member,

WE URGE YOU NOT TO IGNORE THIS REQUEST!

We currently show a balance of \$497.34 due to AOL Long Distance Savings Flan, which is now seriously past due. We have attempted to contact you by several means on a number of occasions.

Please be advised your failure to cooperate in satisfying this debt may leave us no other choice but to refer your account to a collection agency for further action.

The fastest and simplest way to resolve this balance and update your payment information is to go to Keyword: LD Member, click "Update Account", select "I need to change my payment information", and center a valid credit cord then elick submit.

To view your online billing, or if you have any questions about the service, please visit our new Member's Area at Keyword: LD Member.

We accept all major credit cards of a check by phone. To make a paymont arrangement, contact to at 1-888-844-9344. If you have already resolved this debt with our collections department please disregard this notice.

Palm Harbor, FL 34612-1505 Sincerely,

AOL Long Distance Savings Plan Collections Department



AOL Long Distance Savings Plan. F.O. Box 1505 Palm Harbor, FL 34582-1505 9 CERTIFICATION OF THE PROPERTY OF THE PROPERT



AHachment, 11

Subj: Patricia Meyer 618-235-6410 FCC IL 4/26/00

Date: 4/18/00 2:48:33 PM Eastern Daylight Time

From: Tikjoey

To: Ts1cynthia, Tecce

Sent on: AOL 4.0 for Windows

Complaint Summary:

Mkt Code: 822 Online signup

Member is stating that we switched her phone service twice without her authorization. Member did sign up for service in Dec of 1997 online. The order was sent to led on 12/30/97 and it was confirmed by first usage on same day. On 5/19/98 we received notice of cancellation from led. On 5/20/98 we resubmitted an order to led as we were never notified from member that she wanted to cancel. That order was confirmed on 5/21/98. On 10/8/98 we received another notice of cancellation form led but no request to cancel from member. On 10/14/98 another order was sent to led and it was confirmed on 10/15/98. On 11/13/98 member contacted us to find out why we were still her carrier. Member was told that according to the Terms of Service that she had agreed to, we required that all members must notify of us of the request to cancel in writing. She did request to cancel then so we blocked her line of our service. Members last call was on 11/7/98. Total amount billed to account was \$65.28, total amount paid was \$57.58 and total amount credited was \$0.09.

Complaint appears to be invalid as Terms of Service due state that member needs to contact us in the event they want to cancel and we were never contacted. Will offer to credit out 7.61 balance on account and close it with 0 balance due as resolution.

Resolution: No Contact

Tried contacting member with no response, will resolve complaint no contact as follows:

- -Deactivated Screen Name
- -Blocked BTN from our network
- -Removed any billing info
- -Credited out remaining balance on account of 7.61
- -Forwarded info to Patti Volkar to add to do not contact list

Account has been closed with a zero balance due, complaint resolved with no contact. Mailed resolution letter to address on file to inform member of resolution.

ACCOUNT RESOLVED BRIAN.

Long Distance

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Enroll Now To Begin Saving on Long Distance

STEP 1: Enter the telephone number on which you make long distance calls:

217-523-0611

Example: 123-555-1234

STEP 2: Do you frequently use any of your other telephone lines to make long distance calls?

CYes @ No

STEP 3: Tel-Save will bill the credit card on file with AOL or you can provide another credit card:

@ Bill to Credit Card on File

C Bill Another Credit Card

STEP 4: Enter full name for Authorization

DAVID ALLIAN

You will receive your calling card instructions via email within 24 hours of the processing of your order.

MORE INFO

CONTINUE

Long Distance



Tel-Save Long Distance Service Agreement

By completing this order, I authorize Tel-Save, Inc. to request my local telephone company to change my primary interexchange carrier designation for the telephone number listed on the previous screen. I understand that this change is for my interstate and, where applicable, intrastate long distance carrier and that I may designate only one primary interstate, and where applicable, one primary intrastate long distance carrier. I also understand that my local phone company may charge me a fee for this change, which may appear on my local telephone bill as a change related to "The Phone Company", a name that Tel-Save does business as in many jurisdictions. I verify that I am over 18 years of age and have the authority to make this request.

SWITCH FOR:

217-523-0611

PREVIOUS

COMPLETE THIS ORDER

CANCEL